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relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent resident status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval*. If, after initial review or after the interview, the director approves the petition, he or she will remove the conditional basis of the alien's permanent resident status as of the second anniversary of the alien's entry as a conditional permanent resident. He or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate district office for processing for a new Alien Registration Receipt Card, Form I-551, at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial*. If, after initial review or after the interview, the director denies the petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor, and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from this decision; however, the alien may seek review of the decision in deportation proceedings. In deportation proceedings, the burden shall rest with the Service to establish by a preponderance of the evidence that the facts and information in the alien's petition for removal of conditions are not true and that the petition was properly denied.

[59 FR 26591, May 23, 1994]

8 CFR Ch. I (1–1–97 Edition)

PART 217—VISA WAIVER PILOT PROGRAM

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AUTHORITY: 8 U.S.C. 1103, 1187; 8 CFR part 2.

SOURCE: 53 FR 24901, June 30, 1988, unless otherwise noted.

§ 217.1 Scope.

The Visa Waiver Pilot Program is established solely pursuant to the provisions of section 217 of the Act and subject to all conditions and restrictions stipulated in that section, including those relating to the length of the program and the number of countries which may be designated as Visa Waiver Pilot Program countries.

§ 217.2 Eligibility.

(a) *General*. Notwithstanding the provisions of section 212(a)(7)(B)(i)(II) of the Act, a nonimmigrant visa may be waived for an alien who is a national of a country enumerated in § 217.5 of this part regardless of place of residence or point of embarkation who:

(1) Is classifiable as a visitor as defined in section 101(a)(15)(B) of the Act;

(2) Seeks admission to the United States for a period not to exceed ninety days;

(3) Is in possession of a valid passport issued by a designated country;

(4) Is in possession of a completed and signed Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form;

(5) Waives any right otherwise provided in the Act to administrative or judicial review or appeal of an immigration officer's determination as to his or her admissibility other than on the basis of an application for asylum in the United States as provided in section 208 of the Act; and

(6) Waives any right to contest any action for deportation, other than on the basis of an application for asylum in the United States as provided in section 208 of the Act.

(b) *Applicants arriving by air or sea.* (1) Applicants must be in possession of a return trip ticket which will transport the traveler out of the United States to any other foreign port or place as long as the trip does not terminate in contiguous territory or an adjacent island; or will transport the traveler to contiguous territory or an adjacent island, if the traveler is a resident of the country of destination. A return trip ticket includes any of the following:

- (i) A round trip, non-transferable transportation ticket which is valid for a period of not less than one year;
- (ii) Airline employee passes indicating return passage;
- (iii) Individual vouchers;
- (iv) Group vouchers for charter flights only; or
- (v) Military travel orders which include military dependents for return to duty stations outside the United States on United States military flights.

(2) Applicants must arrive in the United States on a carrier which has entered into an agreement as provided in § 217.6 of this part.

(c) *Applicants arriving at land border Ports-of-Entry.* Any applicant arriving at a land border Port-of-Entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land border Port-of-Entry will be charged a fee as prescribed in § 103.7(b)(1) of this chapter for issuance of Form I-94W, nonimmigrant Visa Waiver Arrival/Departure Form.

(d) *Aliens in transit.* An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Pilot Program, provided the applicant meets the eligibility criteria set forth in this section.

[53 FR 24901, June 30, 1988, as amended at 53 FR 50160, Dec. 13, 1988; 56 FR 32953, July 18, 1991; 60 FR 40068, Aug. 7, 1995]

§ 217.3 Maintenance of status.

(a) *Eligibility for immigration benefits.* An alien admitted to the United States under this part may be admitted as a visitor for business or pleasure for a period not to exceed ninety days. An alien admitted under this part must maintain his or her status as a visitor as defined in section 101(a)(15)(B) of the

Act and must not engage in activities in the United States which are inconsistent with that status. An alien admitted under this part is not eligible for extension of his or her authorized period of temporary stay in the United States; is not eligible for adjustment of his or her status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of the Act, other than as an immediate relative as defined in section 201(b) of the Act or under the provisions of section 245(i) of the Act; and is not eligible for change of nonimmigrant status pursuant to section 248 of the Act.

(b) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed thirty days. If departure is accomplished during this period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(c) *Readmission after departure to contiguous territory or adjacent island.* An alien admitted to the United States under this part may be readmitted to the United States in the status of a Visa Waiver Pilot Program visitor after a departure to foreign contiguous territory or adjacent island provided that:

(1) His or her authorized period of temporary stay has not expired,

(2) He or she intends to depart the United States prior to the expiration of his or her authorized period of temporary stay,

(3) He or she presents a valid, unexpired passport which reflects admission to the United States as a Visa Waiver Pilot Program visitor, and

(4) He or she continues to meet all criteria set forth in § 217.2(a) of this part with the exception of arrival on a signatory carrier.

(d) *Adjacent islands.* The term *adjacent islands* means Anguilla, Antigua, Aruba, Bahamas, Barbados, Barbuda, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Cuba, Curacao, Dominica, the Dominican Republic,

Grenada, Guadeloupe, Haiti, Jamaica, Marie-Galante, Martinique, Miquelon, Montserrat, Saba, Saint-Barthelemy, Saint Christopher, Saint Eustatius, Saint Kitts-Nevis, Saint Lucia, Saint Maarten, Saint Martin, Saint Pierre, Saint Vincent and Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and other British, French and Netherlands territory or possession bordering on the Caribbean Sea.

An alien who applies for admission under the provisions of this section may be admitted to the United States only for the remainder of the authorized period of temporary stay which he or she was granted upon arrival in the United States in accordance with the provisions of § 217.2(a) of this part. A Visa Waiver Pilot Program visitor who applies for admission under the provisions of this section is subject to exclusion from the United States pursuant to section 212 of the Act and this part. Departure from and readmission to the United States of an alien under this subsection does not relieve any obligations and responsibilities of the carrier which initially transported such alien to the United States for admission under the provisions of this part.

[53 FR 24901, June 30, 1988, as amended at 53 FR 50160, Dec. 13, 1988; 59 FR 51095, Oct. 7, 1994]

§ 217.4 Excludability and deportability.

(a) *Consent to apply for admission.* Aliens who have been deported from the United States require the consent of the Attorney General to apply for admission to the United States pursuant to section 212(a)(17) of the Act and may not be admitted to the United States under the provisions of this part notwithstanding the fact that the required consent of the Attorney General may have been secured. Such aliens must secure a visa in order to be admitted to the United States as non-immigrants.

(b) *Determinations of excludability and inadmissibility.* (1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be excludable from the United States under one or more of the

grounds of excludability listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act, who applies for asylum in the United States must be referred to an immigration judge for further inquiry.

(2) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Attorney General enumerated in section 212(d) of the Act.

(c) *Determination of deportability.* An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the deportation grounds listed in section 241 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal for deportation shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be referred to an immigration judge for a determination of deportability.

(d)(1) *Removal of excludable and deportable aliens who arrived by air or sea.* The carrier which transported to the United States an alien who is to be removed pursuant to this section will be notified immediately of the determination to remove such alien by means of Form I-259, Notice to Detain, Deport,

Remove, or Present Aliens. Removal from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required in § 217.2(b)(1) of this part. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any excludable or deportable alien at carrier expense, as provided in § 217.6 (b) of this part.

(2) *Removal of excludable and deportable aliens who arrived at land border ports of entry.* Removal under this section will be by the first available means of transportation deemed appropriate by the district director.

[53 FR 24901, June 30, 1988, as amended at 56 FR 32953, July 18, 1991]

§ 217.5 Designated countries.

(a)(1) *Visa Waiver Pilot Program countries.* United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); Germany and Sweden (effective July 15, 1989); Italy and the Netherlands (effective July 29, 1989); Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain (effective October 1, 1991); Brunei (effective July 29, 1993); Argentina (effective July 8, 1996); and Australia (effective July 29, 1996) have been designated as Visa Waiver Pilot Program countries based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

(2) *Visa Waiver Pilot Program countries with Probationary Status.* Effective April 1, 1995, until September 30, 1998 or the expiration of the Visa Waiver Pilot Program, whichever comes first, Ireland has been designated as a Visa Waiver Pilot Program country with Probationary Status in accordance with section 217(g) of the Act.

(b) *Definitions.* For the purposes of this part the term *national of a Visa Waiver Pilot Program country* as used in section 217(a)(2) of the Act when applied to the United Kingdom refers only to British citizens who have the unrestricted right of permanent abode

in the United Kingdom (England, Scotland, Wales, Northern Ireland, Channel Islands, and the Isle of Man); it does not refer to British overseas citizens, British dependent territories citizens, or citizens of British Commonwealth countries.

[53 FR 24901, June 30, 1988, as amended at 56 FR 46716, Sept. 13, 1991; 58 FR 40581, July 29, 1993; 60 FR 15856, Mar. 28, 1995; 61 FR 35600, July 8, 1996; 61 FR 39273, July 29, 1996; 61 FR 41684, Aug. 9, 1996]

§ 217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner on behalf of the Attorney General and shall be on Form I-775, Visa Waiver Pilot Program Agreement. The term "carrier" as used in this part refers to the owner, charterer, lessee or authorized agent of any commercial vessel or commercial aircraft engaged in transporting passengers to the United States from a foreign place.

(b) *Agreement provisions.* (1) To be authorized to transport an alien to the United States pursuant to section 217 of the Act and this part, a carrier must enter into an agreement on Form I-775 to transport as an applicant for admission under section 217 of the Act and this part, only an alien who:

(i) Is a national of and in possession of a valid passport issued by a country listed in § 217.5 of this part;

(ii) Is in possession of a completed and signed Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form, prior to inspection;

(iii) Seeks admission into the United States for 90 days or less;

(iv) Is in possession of round trip, non-transferable passage that is valid for one year, issued by a carrier signatory on Form I-775, or by authorized agents who are subcontractors to such a carrier, and guaranteeing transportation from the United States;

(v) Agrees that the return portion of such passage may be used to effect removal from the United States based on a finding of excludability or deportability under § 217.4 of this part;

(vi) Appears otherwise admissible.

(2) The carrier further agrees to:

(i) Submit to the Immigration and Naturalization Service the Form I-94W

as required by § 231 of this chapter and section 217(e)(1)(B) of the Act;

(ii) Remove from the United States any alien transported by the carrier to the United States for admission under the Visa Waiver Pilot Program, in the event that the alien is determined by an immigration officer at the port of entry to be inadmissible or is determined to have remained unlawfully beyond the 90-day period of admission under the program;

(iii) Reimburse within 30 days of notice (not pay as a penalty) the Immigration and Naturalization Service of any and all expenses incurred in the transportation (from the point of arrival in the United States) of any alien found inadmissible or deportable under this program;

(iv) Retain the responsibilities and obligations enumerated in this part should the alien under the Visa Waiver Pilot Program depart temporarily for a visit to foreign contiguous territory during the period of authorized stay in the United States;

(v) Transport an alien found inadmissible to the United States or deportable from the United States after admission under the Visa Waiver Pilot Program, by accepting as full payment for return passage the return portion of the transportation ticket as required in § 217.6(b)(1)(v) from the original port of arrival in the United States to point of embarkation.

(vi) Ensure that the form I-94W is completed and signed by the alien prior to inspection.

(3) For the purposes of this part, a period of validity of one year need not be reflected on the ticket itself, provided that the carrier agrees that it will honor the return portion of the ticket at any time, as provided in § 217.6(b)(2)(v) of this part. In addition, for the purposes of this part, a roundtrip ticket in possession of an applicant for admission under the Visa Waiver Pilot Program will be considered qualifying in every respect, as long as the arrival in the United States under the pilot program is on a participating carrier.

(c) *Termination of agreements.* The Commissioner, in behalf of the Attorney General, may terminate any carrier agreement under this part with

five days notice to a carrier for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed fifteen days within which the carrier may bring itself into compliance with the terms of the carrier agreement. The agreement shall be subject to cancellation by either party for any reason upon fifteen days' written notice to the other party.

[53 FR 24901, June 30, 1988, as amended at 56 FR 32954, July 18, 1991]

PART 221—ADMISSION OF VISITORS OR STUDENTS

AUTHORITY: Secs. 101, 103, 221, 66 Stat. 166, 173, 191; 8 U.S.C. 1101, 1103, 1201.

§ 221.1 Admission under bond.

The district director having jurisdiction over the intended place of residence of an alien may accept a bond on behalf of an alien defined in section 101(a)(15)(B) or (F) of the Act prior to the issuance of a visa to the alien or upon receipt of a request directly from a U.S. consular officer or upon presentation by an interested person of a notification from the consular officer requiring such a bond; such a bond also may be accepted by the district director with jurisdiction over the port of entry or preinspection station where inspection of the alien takes place. Upon acceptance of such a bond, the district director shall notify the United States consular officer who requested the bond, giving the date and place of acceptance and amount of the bond. All bonds given as a condition of admission of an alien under section 221(g) of the Act shall be executed on Form I-352. For procedures relating to bond riders, acceptable sureties, cancellation, or breaching of bonds, see part 103 of this chapter.

[32 FR 9626, July 4, 1967, as amended at 34 FR 1008, Jan. 23, 1969]